

PTO/SB/21 (02-04)

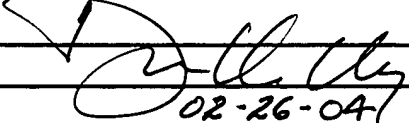
Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/060142	
	Filing Date	February 1, 2002	
	First Named Inventor	Melius, John D.	
	Art Unit	3617	
	Examiner Name	Sherman D. Basinger	
Total Number of Pages in This Submission	20	Attorney Docket Number	MELI001-FIN

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Technology Center (TC)
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input checked="" type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/Incomplete Application	RECEIVED MAR - 1 2004 GROUP 3600	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	Remarks <input checked="" type="checkbox"/> Statement of J Melius <input checked="" type="checkbox"/> Statement of C Melius <input checked="" type="checkbox"/> Exhibits <u>1-9</u> <input checked="" type="checkbox"/> Pow. of Attny/Chng. of Add	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Office of Donald Grant Kelly
Signature	
Date	02-26-04

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.		
Typed or printed name		
Signature		Date

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application Serial No. 10/060,142

Filed: February 1, 2002

Examiner: Basinger, S. D.

For: ERGONOMIC SWIM FIN APPARATUS

Art Unit: 3617

To: Commissioner for Patents
P.O. Box 1450
Technology Center 3600
Alexandria, VA 22313-1450

STATEMENT BY JOHN DAVID MELIUS

in support of
RENEWED PETITION UNDER 37 CFR 1.181
Request for Reconsideration of Commission's Decision
RE: **Petition to Withdraw Holding of Abandonment**

Dear Sir:

My name is John David Melius. I am the above named inventor and Petitioner in the attached Renewed Petition under 37 CFR 1.181. I reside with my wife, Carolyn Melius, at 2725 Vista Court, Waldorf, MD, where we lived together prior to and since February 14, 2003. This address is also where I work as a product developer, and where I receive correspondence from the US Patent and Trademark Office (USPTO).

Official records show February 14, 2003 as the date on which Examiner Basinger issued a Final Rejection in the above-identified patent application, and delivered his Office Action to the US Postal Service (USPS). While it can be presumed that the Office Action would be delivered to our Waldorf address, I can state with confidence that we did not, in fact, receive it. As I have respectfully stated before, the subsequent holding of abandonment came to us as a total surprise.

If the subject Office Action had been received, Carolyn Melius and I would have been directly involved in its receipt. Since this particular Office Action was anxiously awaited by us, its arrival would have been a highly significant occurrence at our household. I would have noted any period for response to the Office Action, and after reviewing its contents would have placed the Action into a new file wrapper, appropriately labeled, and stored it within its assigned folder. Subsequently, I would repeatedly refer to the Office Action as I formulated any required response. Mail receipt and handling at the Melius household has, for many years, followed a routine, which I shall now explain.

Our home and home-based office (a product development business and a Maryland based corporation- Morfin Corp.) are located in the rural community of Waldorf, MD. Waldorf is about thirty miles from the USPTO. Postal mail delivery typically arrives at 2725 Vista Court in a USPS vehicle almost every weekday at approximately midday. The only individuals receiving mail at this address are my wife, my daughter since June, 2003, and myself. The mail which we typically receive includes bills, advertisements or promotional material, cards and letters of a personal nature, packages, meeting notices, magazines and miscellaneous letters involving product development business and corporate matters. Since I file US patent applications as a *pro se* applicant, this address is also where I receive all USPTO correspondence. Our mail arrives in a

hinged flag and door, and mounted on a post at the end of our driveway, and about seventy-five feet from our garage. Please see **Exhibit 1**.

Carolyn Melius almost always is the one who gathers the mail from our box and brings it into the house. Upon entering the residence, Carolyn Melius sorts the mail, and immediately hands over to me any correspondence that relates to the product development business and Morfin Corp. and/or patent applications. Over many years, this has been and continues to be our family routine with respect to mail handling. It is a routine interrupted or altered only when Carolyn Melius or I am on extended travel away from our residence/office, with only rare exceptions as when mail was noted as apparently stolen from the box, or when mail delivery service is disrupted by a holiday or unusually inclement weather.

I was present at 2725 Vista Court every day from prior to the February 14, 2003 mailing date of the subject Office Action, until at least March 7, 2003. According to my personal and professional appointment records, I left the house briefly for five meetings, but returned on the same day and did not miss a mail delivery. At no time did we see or handle any arriving USPTO correspondence, most certainly not the Office Action mail-dated February 14, 2003.

It is unknowable as to what might have happened to the Office Action as it entered into the USPS delivery system. During the past year, we have noted and reported to the USPS incidents where we suspected or had proof that mail had been stolen from our mailbox. Also, an unusually heavy snow storm took place throughout the Washington, DC region beginning a very short time after February 14, 2003. During that snowstorm and for several days that followed, the streets in our neighborhood were navigated only with great difficulty; mailboxes appeared as mere bumps in the snow banks; no mail arrived for several days.

When mail delivery resumed, I recall that the delivery volume was "heavier" than usual as the USPS caught up with backlogs. However, again, the mail delivery at that time and subsequent to that time did not include the subject Office Action. If the Office Action had arrived, it would have been opened, read for content and carefully placed into my home-office filing system.

While my *pro se* patent practice rarely involves more than two simultaneous active filings, I have always been keenly aware of the importance of keeping track of prosecution documents and related correspondence. Accordingly, some years ago, I established a systematic filing array as a way of effectively organizing my work. Permit me to describe this system.

When USPTO-related mail arrives, in the manner just described, I review it to see when a response would be required and immediately begin preparing a response. Such correspondence is then stored for future reference in my filing system. My filing system consists of two vertical filing cabinets for business and personal records as well as two suspension-file boxes specifically for corporate records and USPTO business. A photograph of the file cabinets is attached and hereby referenced as **Exhibit 3**. A photograph of the two file boxes containing suspension-folders is attached and hereby referenced as **Exhibit 4**. A photograph showing my USPTO business file box containing suspension-folders with patent papers is attached and hereby referred to as **Exhibit 2**.

Throughout the period when the Office Action could reasonably be expected to arrive, I was the only person who accessed the USPTO business files and the papers contained in folders stored within those files. (Note: My daughter was later hired to help me with this work.) I maintain a separate hanging file folder for each patent application or provisional patent application. Each file folder is marked at its top with a label identifying the invention-subject by title. Please see the photograph referred to as **Exhibit 5**. The specific folder associated with the above-referenced US patent application is, of course, labeled: ERGONOMIC SWIM FIN. A photograph of the outside of this labeled file folder is attached and is hereby referenced as **Exhibit 6**.

This suspension-folder (**Exhibit 6**) is where all USPTO-related communications and related papers, such as Office Actions, postcard receipts, notices, responses, draft responses, search reports and so forth relative to the subject application are kept. Papers in the folder are arranged conveniently within file wrappers and placed in chronological order, with the most recent entry on top. When a USPTO Office Action is located at the front of the folder, this serves as my visual reminder that the next step to be taken in the prosecution of my patent application will be my own. The absence of a USPTO-source paper at the top of the folder indicates that I am awaiting a reaction to my previously submitted paper, which itself will reside at the front of the folder. I am confident that, subsequent to the mailing of the Office Action of February 14, 2003, the Office Action *would have been placed* at the top of its associated folder (again, **Exhibit 6**), just within the jacket cover.

I always keep such papers in specifically labeled file wrappers within their assigned folder. The only exception is when I have them on my desk for review or for preparing a response. Immediately upon receiving notice of the holding of abandonment, and a number of times after that, I conducted a thorough search of this *the ERGONOMIC SWIM FIN* folder. My spouse, Carolyn, assisted me in this search and we extended the search effort to the entire filing system and even to other locations in our residence where the Office Action might have been erroneously placed. We failed to find the communication in question.

I do recall, following my December 2002 submission (a response to the Examiner's first rejection) in the subject patent application, I was anxiously awaiting the Examiner's reaction. The subject file folder was my constant reminder that the Examiner's reaction was pending. I grew concerned when I did not receive an Office Action by around the third month. However, after talking with colleagues who also are inventors and product developers, my belief was that the delay in receiving the Examiner's correspondence was likely due to the USPTO's widely known backlogs. Besides, I thought it best not to pester the Examiner with inquiries. This is merely an observation, of course, and has no bearing upon my stated position that the Office Action of February 14, 2004 was never received.

While I remain confident that my records are sufficient to show non-receipt of the subject Office Action, I am nonetheless modifying and improving my correspondence handling and tracking system. For instance, I have leased a Post Office box in nearby Pomfret, MD and at my home office have set in place a multilevel calendar tickler system. Further, I engaged the service of a Registered Patent Agent to help with the tickler system design and to act with Power of Attorney on my behalf with respect to this Renewed Petition. With the hoped-for grant of this renewed petition, my intention is to continue as a *pro se* applicant aided by this new system of correspondence handling and monitoring. Favorable consideration of the Renewed Petition and the immediate withdrawal of the holding of abandonment are respectfully requested. I stand ready to provide more information as necessary.

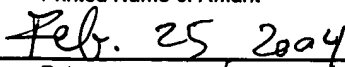
I hereby assert that all statements made herein of my own knowledge are true and that all statements made on information are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statement may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.



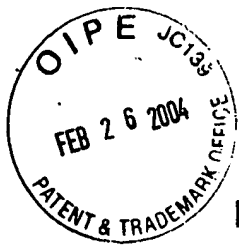
Signature

John David Melius

Printed Name of Affiant



Date



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application Serial No. 10/060,142

Filed: February 1, 2002

Examiner: Basinger, S. D.

For: ERGONOMIC SWIM FIN APPARATUS

Art Unit: 3617

To: **Commissioner for Patents**
P.O. Box 1450
Technology Center 3600
Alexandria, VA 22313-1450

STATEMENT BY CAROLYN MELIUS

in support of

RENEWED PETITION UNDER 37 CFR 1.181

Request for Reconsideration of Commission's Decision

RE: Petition to Withdraw Holding of Abandonment

Dear Sir:

My name is Carolyn Melius. My husband is John David Melius, the above named inventor and Petitioner in the attached Renewed Petition under 37 CFR 1.181. We both reside at 2725 Vista Court, Waldorf, MD, where we lived together prior to and since February 14, 2003. This address is also where my husband works as a product developer, and where he receive correspondence from the US Patent and Trademark Office (USPTO).


Inasmuch as I almost always retrieve the incoming mail from our mailbox, it is highly likely that all correspondence from the USPTO will be brought into the house by me, whereupon I would have handed such correspondence directly to John Melius. No one else, besides the two of us, ever handles the incoming mail at 2725 Vista Court. Once John Melius receives USPTO-related mail, he takes it to his desk for review, and subsequently places it into its proper file folder (represented by and referenced hereby as Exhibits 2, 5, and 6).

I recall that John Melius and I both were expecting a response from the USPTO in the form of an Office Action by Examiner Basinger. I also recall that John Melius was concerned about the protracted time period within which the Office Action did not arrive. When we received notice that the subject patent application was being held abandoned since John Melius did not respond to an Office Action dated February 14, 2003, I assisted my husband in undertaking more than one thorough search of the files and folders alluded to in the above referenced Exhibits.

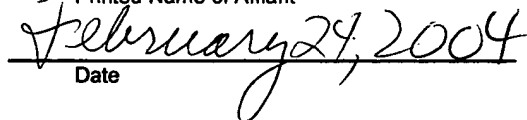
Our exhaustive searches found no sign of receipt of the Office Action dated February 14, 2003. Further, I can state unequivocally that I never saw or handled any Office Action dated February 14, 2003. Both my husband and I were present during the weeks following the subject mail date.

Had the Office Action been received, either my husband or I, or both of us would have been directly involved in its receipt and handling.

I hereby assert that all statements made herein of my own knowledge are true and that all statements made on information are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statement may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.


Signature

Carolyn Melius
Printed Name of Affiant


Date